

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : September 08, 2016

+ BAIL APPLN. 2759/2015
ANADIL HASAN Petitioner
Through: Ms.Inderjeet Sidhu, Advocate.

versus

STATE Respondent
Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 439 of Cr. P.C., the petitioner seeks bail in a case registered as FIR No. 139/11 under Section 364-A/302/120B/34 of Indian Penal Code, at Police Station I.P. Estate, New Delhi.

2. The case of the prosecution is that the petitioner in conspiracy with his associates had kidnapped one Rohit Ahlawat i.e. son of the complainant – R.R.Ahlawat, for ransom of Rs.50 lac. Later on, son of the complainant was strangled and was killed. During the investigation it was revealed that the mobile phone of the victim – Rohit Ahlawat was being used for making the ransom call. It also came to notice that a sum of Rs.8,500/- were withdrawn from the account of the deceased. CCTV installed at the ATM regarding

withdrawal of the money was seized wherein two boys were seen withdrawing cash from the ATM. On the basis of electronic surveillance, the petitioner was arrested alongwith other co-accused on 25.11.2011. Mobile phone used for making ransom calls by the petitioner was also recovered.

3. Status report filed on behalf of the State clearly indicates the manner in which the conspiracy of kidnapping the victim was hatched. According to the prosecution, two girls namely Fariyal and Nishu were arranged by the petitioner who lured the victim. On 22.11.2011 kidnappers called the complainant from the mobile of the victim and demanded Rs.50 lacs. It was agreed that the ransom money will be arranged at Agarsain Hospital, Punjabi Bagh, Delhi but nobody came to collect the same. On 23.11.2011 the accused persons directed the complainant to board a bus at 8 PM from Sarai Kale Khan to Karoli, Rajasthan for delivering the ransom money in Karoli, Rajasthan. Police team followed the complainant cautiously. Since the accused persons were making contact to the complainant, their mobile phone location was traced and the raiding team apprehended the petitioner alongwith two other accused at Cahudhary Hotel, Bandikui, Rajasthan. On their disclosure they confessed that they kidnapped the victim and threw his dead body near Village Asgaripur, Distt. Moradabad, UP.

4. During investigation it was revealed that accused Mukesh shot Rohit on his head with a country made pistol just to ensure his death.

Even after killing the victim, the accused continued calling the complainant over his mobile and demanded a ransom of Rs.50 lacs.

5. Autopsy surgeon of Civil Hospital, Moradabad, UP has given the cause of death as "*Asphyxia as a result of anti mortem strangulation*". Fractures were also noticed in the skull at the time of autopsy and autopsy surgeon has also mentioned this fact in his report. Country made pistol was also recovered from the sugarcane field of Village Sarkdi Aziz, Distt. J.P. Nagar, UP. Mobile phone of the victim was also recovered from the bushes near Burja Bypass on Jaipur, Alwar Highways at the instance of accused persons. After completion of investigation, charge sheet for the offences punishable under Sections 364-A/394/302/201/120B/34 of IPC and Sections 25/27/54/59 of Arms Act was filed against all the accused persons.

6. Learned counsel for the petitioner contended that the petitioner has been falsely implicated in the present case and is in custody since 30.11.2011. Since the present case is based on circumstantial evidence, but there is no eye witness or last seen evidence against the petitioner. Apart from the aforesaid, all the material witnesses have been examined but nothing incriminating against the petitioner has been found. It is contended on behalf of the petitioner that the petitioner has filed the bail application before the Trial Court but the learned Additional Sessions Judge has rejected the same vide order dated 05.06.2015. It is further contended that all the main prosecution witnesses have been examined and no allegation is proved against the

petitioner therefore, the petitioner is entitled to bail in the present case.

7. Learned Additional Public Prosecutor appearing for the State vehemently opposed the aforesaid contentions raised on behalf of the petitioner. It is submitted that the petitioner is charged with the offences punishable under Section 364-A/394/302/201/120B/34 of IPC and Sections 25/27/54/59 of Arms Act and the petitioner is the main conspirator and mastermind of the crime. Moreover 32 out of 37 prosecution witnesses have already been examined. It is further informed that the bail application of the petitioner has already been dismissed by the learned Additional Sessions Judge vide order dated 05.06.2015. Since the evidence of linked witnesses is yet to be examined, therefore the petitioner be not granted bail in this case.

8. I have heard the submissions made by learned counsel for the petitioner and the learned Additional Public Prosecutor for the State. I have also gone through the impugned order as well as record of the case. Admittedly, the charge sheet in this case has been filed and 32 out of 37 witnesses have been examined. Apart from the aforesaid, the petitioner has been charged with the offence punishable under Section 364-A/394/302/201/120B/34 of IPC and Sections 25/27/54/59 of Arms Act which are grievous in nature.

9. In *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496, the Hon'ble Supreme Court dealt with the basic principles laid down in catena of judgments on the point of granting bail. The Court proceeded to enumerate the factors:

9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

10. This court further notes that several contentions have been raised by learned counsel for the petitioner highlighting the depositions of some witnesses and contradictions therein and raised the grounds for granting bail to the petitioner. So far as those grounds, circumstances, explanations, reasoning, contradictions and discrepancies are concerned, this court is of the opinion that all such circumstances shall be tried by the concerned Court and the same shall be decided by leading cogent evidence. However, for the purpose of deciding the present bail application, this Court need not go to look

into all such material facts which are already pending adjudication before the concerned court. What this Court needs to consider is as to whether or not the petitioner has been able to make out any prima facie case for grant of bail to the petitioner.

11. This court observes that though 32 out of 37 prosecution witnesses have been examined but it is informed that the linked witnesses are yet to be examined. It is further informed by the learned Additional Public Prosecutor for the State that the petitioner is a main conspirator of the crime and he has been charged with the heinous crime of kidnapping for ransom of Rs.50 lac and thereafter committing murder of the son of the complainant.

12. In light of the aforesaid facts and circumstances and the aforesaid legal principles, this Court is not inclined to grant bail to the petitioner. Resultantly, in the considered opinion of this court, the facts emerging from the record culminate into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed at this stage.

13. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of

the trial.

14. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

(P.S.TEJI)
JUDGE

SEPTEMBER 08, 2016
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